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TAGS: ELAB EINV ECON PGOV CH
SUBJECT: CHINA EXPERIMENTS WITH 'WAGE GUARANTEE
FUNDS' TO TACKLE WAGE ARREARS

(U) SENSITIVE BUT UNCLASSIFIED: NOT FOR INTERNET
DISTRIBUTION

¶1. (U) Summary: Wage Guarantee Funds (WGFs - definition in para 5) are one of the tools Chinese local governments are using to tackle the problem of wage arrears, which is especially pervasive among migrant workers in the construction industry. Embassy visits to several locations in China in July 2006 confirmed that the role of WGFs varies considerably from region to region, as do Chinese views about their effectiveness. Chinese experts are skeptical; at best, they reason, WGFs are a useful part of a package of transitional measures to improve enforcement until China changes its labor laws to make non-payment of wages a crime. At worst, WGFs will make little or no difference because local governments lack the political will to put the workers' interests above those of project developers, construction companies and labor contracting agents. End Summary.

THE PROBLEM OF WAGE ARREARS

¶2. (U) Late or non-payment of wages to employees is widespread in China in both state-owned and private enterprises. A report issued by the National People's Congress on Labor Law implementation in December 2005 indicated that, according to a government survey, 7.8 percent of all formal sector employees had experienced wage arrears in the past year, and that the average duration of arrears was 3.2 months. According to the same survey, over 16 percent of workers in some provinces had experienced arrears. The problem is especially acute in the construction, labor-intensive manufacturing and food and beverage sectors. Migrant workers are especially vulnerable to late or non-payment of

wages.

¶3. (U) Two aspects of Chinese law contribute to the problem. First, non-payment of wages is not a crime. Although Chinese law and numerous implementing regulations require employers to pay wages in full at least monthly, there is no penalty for non-payment in China's criminal code. Wage arrearage cases can therefore only be handled as administrative cases or contract violations, and even if successfully prosecuted, penalties are insufficient deterrents. A typical penalty is that the employer must pay an additional 25 percent of the wage bill to the worker in compensation. The second problem is the lack of legal liability for wages of workers employed through labor contractors, including legally registered Labor Dispatch Agencies (LDAs) and unregulated labor contractors. The former are legally-registered entities that provide manpower to enterprises in exchange for a fee, so the legal employer-employee relationship is between the worker and the LDA. An LDA is legally responsible for complying with all wage and benefit regulations. Unregulated labor contractors include individual facilitators or informal operations accountable to no one. The construction industry relies particularly heavily on LDAs and unregulated labor contractors, which makes it easy for construction companies and labor contractors to deflect responsibility for non-payment of wages on each other, leaving the workers unpaid.

¶4. (U) In recognition of this widespread abuse of workers, and its implications for social stability,

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the Central Government's State Council and Ministry of Labor and Social Security (MOLSS) issued three circulars between September 2003 and September 2004, directing local governments to monitor the construction industry more closely and to take measures to eliminate late- or non-payment of wages to migrant workers. The Central Government vowed in late 2003 to eliminate wage arrears to migrants by the end of 2006.

¶5. (U) Since 2003, 24 Chinese provinces/municipalities issued regulations establishing Wage Guarantee Funds (WGFs). WGFs are bonds, generally set as a percentage of project value, which employers must deposit in bank accounts controlled by local governments to be used against wages claims. In principle, project developers and/or construction companies cannot withdraw these funds until their wage liabilities are cleared.

¶6. (U) Labor intern visited Zhengzhou (Henan Province) on July 7 and joined AmCongen Pol/Econoff in meetings in Guangzhou and Dongguan (Guangdong Province) on July 21 to study the implementation of WGFs and other anti-wage arrearage initiatives.

HENAN OFFICIALS SEE WGF'S AS A TRANSITIONAL MEASURE

¶7. (U) Zhengzhou is the capital of Henan, China's most populous province with 97 million people and some 15 million migrant workers. The Henan (provincial) and Zhengzhou (municipal) governments have both established WGFs in response to the 2003 circulars.

¶8. (SBU) Tang Min, Director, Henan Provincial Labor and Social Services (LSS) Bureau, said that Henan faced serious wage arrears in recent years, but three factors have largely resolved the problem: 1)

the State Council's guidance (the 2003 circulars; 2) increased enforcement efforts at the provincial level; and 3) the establishment of WGFs for the construction industry. Tang said the Henan regulation requires project developers and construction companies to deposit WGFs before relevant jurisdictions can issue construction permits for any project.

¶9. (U) The rules established in Henan Province require the project developers and construction companies each to pay two percent of the project value into a special account supervised by the local LSS Bureau. (Zhengzhou municipal regulations require deposits of 1.5 percent each.) The depositors can withdraw these funds with accrued interest, after local authorities (the LSS Bureau and Construction Committee) determine that the project is complete and wages have been paid in full.

¶10. (SBU) Tang Min said wage arrears occurred for three main reasons: 1) project developers did not pay construction companies in full, so cash-strapped construction companies would withhold wages; 2) some companies initiated construction without sufficient funding and encountered cash flow problems; and 3) legal and illegal subcontracting for labor resulted in a loss of accountability for wages. Tang also said that, prior to the creation of WGFs in Henan, wage arrears were common and the government enforcement efforts had little effect, something he attributed to the lack of clear laws on wage

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liability.

¶11. (SBU) Henan and Zhengzhou officials said the WGF program was effective. Tang reported that Henan's Provincial WGF contained RMB 26 billion (USD 3.25 billion) and that the fund had paid out RMB 8.8 million (USD 1.1 million) to migrant workers since ¶2003. Dr. Pan Kaiming, Deputy DG of the Zhengzhou Construction Committee said Zhengzhou had resolved RMB 110 million (USD 13.75 million) in wage arrears, which includes RMB 50 million (USD 6.25 million) that accumulated since the Government's pledge to clear wage arrears in 2003.

¶12. (SBU) Despite their praise for WGFs, Tang and Pan both said WGFs alone are not enough. Other important measures include establishing local offices to resolve wage arrears; routine and random LSS work-site inspections; enacting tougher standards for registering LSAs; enforcing a "one strike you're out" policy for companies that fail to pay workers; making companies post employer and wage arrear helpline information on visible billboards at construction sites; educating migrant workers about pay, compensation, and rights at the workplace; and blacklisting defaulting companies using media and government websites. In short, enforcement and accountability are the keys.

¶13. (SBU) Tang and Pan believed that WGFs, even when combined with other enforcement initiatives, were at best a transitional measure. The most important step toward protecting migrant workers from wage arrears would be changes to the law making non-payment of wages a criminal offense. Pan noted that the 3,000 labor inspectors at all levels of government in Henan had multiple responsibilities, and were simply inadequate to guarantee wage compliance for the province's 15 million migrant workers. Criminal liability would encourage employers to modify their own behavior.

¶14. (U) Guangdong, China's wealthiest province and home to about 30 million of China's estimated 200 million migrant workers, has some of the worst wage arrears problems in China. Not surprisingly, Guangdong has not established a WGF program, and we encountered a range of ideas on how to address the problem of wage arrears there during our July 21 discussions.

¶15. (SBU) Zheng Chaoyang, Deputy Director General of the Guangdong Provincial LSS Bureau, said Guangdong has not established a province-wide WGF program because of sensitivities, such as its possible effect on business operations. Since the law does not clearly dictate how to address wage arrears, Guangdong and surrounding localities have opted to address the problem of arrears through means other than WGFs, such as blacklisting employers who fail to pay wages.

¶16. (U) Zheng explained that in May 2005, Guangdong Provincial authorities issued a regulation that enforces minimum wage standards and a system to deal with construction companies who fail to pay migrant workers. Moreover, Guangdong created a hotline number for workers to call regarding labor rights violations, and posted this information to a website.

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¶17. (SBU) DDG Zheng added that Guangdong has taken further steps to minimize wage arrearages, such as creating a labor arbitration office, providing training to companies with bad track records on wage arrears, and electronically classifying all construction companies doing business in Guangdong. This system, Zheng explained, classifies companies based upon reports from inspectors or complaints filed by workers, then places them into a color coded filing system, which is updated monthly, so that the government is aware of violators. So far in 2006, Guangdong has blacklisted 30 companies and made their names and information available to the public, he said. DDG Zheng believed the All China Federation of Trade Unions, Construction Bureau, Public Security Bureau, and courts could improve coordination to crackdown on wage arrearages.

¶18. (SBU) Zheng Zizhen, Director of the Guangdong Academy of Social Sciences. told us that that a WGF program would probably not work in practice because construction companies would find a way to avoid depositing the required bonds. Zheng Zizhen said Guangdong is preparing to implement a worker safety card pilot program, which will help workers and the LSS Bureau track wages and benefits. Director Zheng also believed that workers themselves could be "inspectors" by raising complaints, but only if higher level government officials are willing to act on their complaints.

¶19. (SBU) Huang Zhian, Director of the Construction Bureau in Dongguan (50 kilometers southeast of Guangzhou and home to some 8 million migrant workers) said Dongguan's WGF is different than WGF programs elsewhere. The Dongguan program focuses on ensuring that construction work is adequately financed by requiring project developers to place 20 percent of the project value in accounts controlled by the Construction Bureau. Dongguan also subjects developers to regular inspections to ensure that

developers maintain adequate finances, that workers get paid on time, that projects finish on time, and that defaulting companies are held responsible. Huang said Dongguan's 200-plus part- and full-time inspectors in the LSS, Construction Bureau, and Municipality respond to complaints from the labor violations hotline, and work closely with over 600 labor mediators and 34 legal aid offices in the city.

¶20. (SBU) Liu Kaiming, Director of the Institute of Contemporary Observation, a labor NGO in Guangdong's Shenzhen Special Economic Zone, was skeptical about the prospects for WGFs in Shenzhen (now being implemented on a pilot basis). He estimated that half of the wage arrears reported in 2003 related to the government's failure to pay its bills for government-funded projects. He felt that WGFs would tempt government officials into corruption, rather than reduce wage arrears. He was also skeptical of blacklisting, pointing out that a company blacklisted in one locality can easily find work in another.

THE REAL PROBLEM LIES WITH ENFORCEMENT

¶21. (SBU) On August 4, Laboff met with Shi Fu Mao, executive director of the Migrant Workers Legal Aid Station in Beijing. Shi said that wage arrears are the subject of most complaints his office receives.

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Shi said Beijing has regulations on WGFs on the books, but that participation in WGFs is not mandatory in practice, and WGFs have not reduced the wage arrears problem. When asked whether wage arrears exist because of gaps in the law, Shi noted that failure to pay wages is not a criminal offense, and that administrative penalties are weak, but said he believed the main problem was the LSS Bureaus' unwillingness to enforce the law, and their inability to coordinate with courts. Shi said that despite gaps in the law, there are ample regulations requiring on-time payment of wages, and that the LSS Bureau does have the authority to call employers and instruct them to pay. The problem, he said, is that the LSS bureau rarely makes the call.

COMMENT

¶22. (SBU) Ministry of Construction statistics quoted in the Chinese press state that construction companies have paid out 95.2 percent of the RMB 177 billion (USD 22 billion) in wage arrears to migrants that they reported to the government before the end of 2003. Whether or not these figures are accurate, new arrears have continued to accumulate. Although the Central Government maintains its position that it will eliminate wage arrears by the end of this year, it is not clear whether they are looking at arrears reported by construction companies or by workers. In any case, barring a major push from the Central Government, Embassy does not expect a major improvement in the wage arrears situation.

¶23. (U) This message was coordinated with Consulate Guangzhou.

SEDNEY